

**IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:05CV250**

**CHARLES W. FORTNER,**

**Plaintiff**

**v**

**JOANNE BARNHART,  
Commissioner of Social Security,**

**Defendant.**

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**ORDER OF RECUSAL**

**THIS CAUSE** coming on to be heard and being heard before the undersigned Dennis L. Howell, United States Magistrate Judge for the Western District of North Carolina, upon the court's own Motion to Recuse. In reviewing the Application to Proceed in Forma Pauperis, Supporting Documentation and Order, it appears that the plaintiff is Charles W. Fortner. Mr. Fortner is a person well known to the undersigned. Mr. Fortner and the undersigned were fellow students in a small high school in Yancey County, North Carolina. While practicing law as a private practitioner in Yancey County, North Carolina, the undersigned represented Mr. Fortner and members of his family in various legal matters over a period of many years.

The court has considered 28, United States Code, Section 455 and Canon 2 of the Code of Conduct for Judges and Judicial Employees to determine whether or not the undersigned should remove himself from matters involving persons with whom the undersigned represented while in the practice of law. The court has found that 28, United States Code, Section 455(a) provides as follows:

“Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.”

Title 28, United States Code, Section 455(e) provides:

“Where the ground for disqualification arises only under Subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.”

Although 28, United States Code, 455(e) provides that waiver of disqualification may be accepted, the court considers Canon 2 and the Advisory Opinions of the Code of Conduct for Judges

and Judicial Employees as being mandatory and as a result the undersigned should recuse himself in this matter.

**IT IS, THEREFORE, ORDERED** as follows:

- (1) That the undersigned recuses himself from this matter, pursuant to 28, United States Code, Section 455(a); and
- (2) That this matter be transferred to United States District Judge Lacy H. Thornburg for all further proceedings.

**Signed: July 16, 2005**

Dennis L. Howell

Dennis L. Howell  
United States Magistrate Judge

